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ARGUMENTS/COMMENTS

Claims 1 through 20 are currently pending in the present application.

Applicants sincerely appreciate the indication of allowability of claims 16 through 20.

Claims 1 through 15 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The Office Action asserts the newly added limitations have not been done as in the previous amended claims in which they are done as being "one of a group of...". Claim 1 has been amended to provide proper markush group format. Reconsideration and withdrawal of the rejection are requested.

In the Office Action, claims 1 through 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,447,462 to Smith et al. (hereinafter "Smith"). Applicants respectfully disagree.

Claim 1 is directed to a brassiere for supporting a wearer's breasts. Claim 1 now provides that each of the pair of breast cups has a first fabric layer, a second fabric layer and a third fabric layer between the first fabric layer and the second fabric layer. The third fabric layer has an outer surface and an inner surface. The third fabric layer provides breathability to the wearer's breasts and support to the pair of breast cups. The third fabric layer has a first side and a second side. The third fabric layer has a feature selected from the group consisting of a plurality of perforations, a plurality of valleys, a plurality of dimples, and any combination thereof.

The Smith et al. patent, which is owned by the assignee of the present application, is directed to garments, such as brassieres, that incorporate fabric laminates having two outer layers and an inner layer of an adhesive web or film.

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(column 5, lines 42 through 52). The adhesive web is heat sensitive and formed of a polyamide material. The laminate is formed by the application of pressure and heat.

In the Response to Arguments portion, the Office Action asserts that the outer layer of the Smith material is of lace material as suggested therein, the material has openings and is breathable through those openings and that the net has openings and is also breathable through those openings even when the adhesive adheres the fabrics together and therefore, all of the fabric layers are breathable therethrough. Applicants respectfully disagree. Smith mentions lace only once, "[p]anty 20 includes a front panel 21, frontal side panels 22 and transitional lace panels 23." (col. 6, line 63). Moreover, there is no recitation in the Smith specification that the transitional lace panels have more than one layer, let alone a first fabric layer, a second fabric layer and a third fabric layer, with the third fabric layer that provides breathability to the wearer's breasts as recited in claim 1. Rather, column 7, lines 6 through 9 of the Smith application provide that front panel 21 and panels 22 and 25 are formed of the laminate shown in Figures 1 and 2.

In addition, the inner heat activated web or film layer together with the outer layers are subjected to heat and pressure. The Office Action asserts that when heated the net cross pieces remain in the net structure and adhere the layers above and below. However, the application of heat and pressure to form the laminate teach away from an inner layer that provides breathability to a wearer's breasts. Thus, Smith fails to disclose or suggest that the third fabric layer provides breathability to the wearer's breasts, as recited by claim 1.

Additionally, there is no recitation that the inner layer has a feature selected from the group consisting of a plurality of perforations, a plurality of valleys, a plurality of dimples, and any combination thereof, as recited by claim 1.

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Again, the use of pressure and heat to form the laminate of the patent teaches contrary to the formation of a plurality of perforations.

Claims 2 through 8 depend from independent claim 1, and are also not anticipated by the Smith et al. patent for the same reasons. Withdrawal and reconsideration of the 35 U.S.C. 102(b) are respectfully requested.

Claim 3 depends from independent claim 1 and provides that the third fabric layer has a plurality of perforations forming a pattern that is visible through the first fabric layer.

Page 3 of the Office Action states that "the perforations are visible through sheer outer fabric layer". Applicants' respectfully disagree. First, there is no disclosure that the third layer of the Smith et al. patent has a plurality of perforations that form a pattern. The Smith et al. patent only states that the third layer is formed as either a web or a film. Further, after reviewing the Smith et al. patent, Applicants are unable to find any recitation in the patent that references perforations that are visible through the sheer outer fabric. As discussed above, Smith mentions lace only once, "[p]anty 20 includes a front panel 21, frontal side panels 22 and transitional lace panels 23." (col. 6, line 63). Moreover, there is no recitation in the Smith et al. patent that the transitional lace panels have more than one layer, let alone a first fabric layer, a second fabric layer and a third fabric layer, with the third fabric layer that provides breathability to the wearer's breasts as recited in claim 1. Rather, column 7, lines 6 through 9 of the Smith et al. patent provide that front panel 21 and panels 22 and 25 are formed of the laminate shown in Figures 1 and 2. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 4 depends from independent claim 3 and provides that the pattern be selected from the group consisting of a floral pattern, a flower, a plurality of

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flowers, a heart, a plurality of hearts, a spiral, a plurality of spirals, a free-form design, a message, a plurality of numbers, a plurality of letters, a logo, and any combinations thereof.

As discussed previously, there is not any recitation in the Smith et al. patent of any pattern, let alone any pattern of the claimed group. The Smith et al. patent only states that the third layer is formed as either a web or a film. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 5 depends from independent claim 1 and provides that the third fabric layer has a feature selected from the group consisting of a plurality of dimples, a plurality of valleys, and any combinations thereof.

Applicants respectfully submit that there is no recitation in the Smith et al. patent that the third fabric layer has a plurality dimples, a plurality of valleys or any combinations thereof. Page 3 of the Office Action the "perforations are visible through sheer outer fabric layer and is free form since it is the holes in the net, includes valleys." Applicants respectfully disagree. The Smith et al. patent only states that the third layer is formed as either a web or a film. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 7 depends from independent claim 1 and provides that the third fabric layer is connected between be the first fabric layer and the second fabric layer, the third layer being connected by a method selected from the group consisting of sewing, gluing, riveting, molding, ultrasonic connection, a mechanical connection, and any combinations thereof.

The Office Action states that "the sheer outer fabric layer. . . is glued". (page 3). Applicants respectfully disagree with this assertion. After reviewing the portions of the specification referenced in the Office Action, the third fabric layer

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recited to be an "open netlike film of a heat sensitive adhesive", is not connected between the first and second fabric layers by gluing, as claimed. In contrast, the laminate is formed by fusing. (column 9, lines 12 through 37). Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 8 depends from independent claim 1 and provides that the third fabric layer be connected peripherally to the first fabric layer and said second fabric layer, wherein said third fabric layer is substantially enclosed between said first fabric layer and said second fabric layer.

The Smith et al. patent does not disclose or suggest that the third layer be connected peripherally to the first fabric layer and the second fabric layer. In contrast, "fabric layers 11 and 12 . . . are secured to each other along their opposed surfaces 14 and 15 by heat activated adhesive web 13". (column 5, lines 15 through 18). Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Independent claim 9 is directed to an article of clothing for covering a wearer's breasts that includes a first breast cup, a second breast cup, a center gore being between the first breast cup and a second breast cup, with the first breast cup and the second breast cup having an outer layer of fabric, and a spacer fabric layer being connected to the outer layer of fabric when the article of fabric of clothing is positioned on the wearer. The spacer fabric layer is positioned between the outer fabric layer and the wearer's breasts. The spacer fabric layer provides breathability to the wearer's breasts. The spacer fabric layer has a first side and a second side. The spacer fabric layer has a plurality of perforations on a location of the spacer fabric layer.

In the Smith et al. patent, there is no such spacer fabric disclosed. In contrast, the brassiere in the Smith et al. patent has a laminate 58, having an outer layer and an adhesive web or film positioned between the outer layer and

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the wearer's breasts. This adhesive web or film is laminated and is heat activated. It is not a spacer fabric. The spacer fabric of the instant invention must be interpreted in light of the specification. (pp.2 and 8, at Paragraphs [0006] and [0032], respectively).

Further, in the Response to Arguments portion, the Office Action asserts that the outer layer of the Smith material is of lace material as suggested therein, the material has openings and is breathable through those openings and that the net has openings and is also breathable through those openings even when the adhesive adheres the fabrics together and therefore, all of the fabric layers are breathable therethrough. Applicants respectfully disagree. Smith mentions lace only once, "[p]anty 20 includes a front panel 21, frontal side panels 22 and transitional lace panels 23." (col. 6, line 63). Moreover, there is no recitation in the Smith et al. patent that the transitional lace panels have more than one layer, let alone a first fabric layer, a second fabric layer and a third fabric layer, with the spacer fabric layer that provides breathability to the wearer's breasts as recited in claim 9. Rather, column 7, lines 6 through 9 of the Smith et al. patent provide that front panel 21 and panels 22 and 25 are formed of the laminate shown in Figures 1 and 2.

In addition, the inner heat activated web or film layer together with the outer layers are subjected to heat and pressure. The Office Action asserts that when heated the net cross pieces remain in the net structure and adhere the layers above and below. However, the application of heat and pressure to form the laminate teach away from an inner layer that provides breathability to a wearer's breasts. Also, the heat activated web or film material and layers being formed into a laminate at temperatures between 300 °F and 350 °F with applied pressure does not suggest that the web or film provides breathability. Thus, Smith fails to disclose or suggest that the spacer fabric layer provide breathability to the wearer's breasts, as recited by claim 9.

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Claims 10 through 14 depend from claim 9, and, thus, are also not anticipated by Smith. Accordingly, withdrawal and reconsideration of the 35 U.S.C. 102(b) are respectfully requested.

Claim 10 depends from independent claim 9 and provides that the spacer fabric layer has a first surface facing the wearer's breasts and being substantially smooth relative to a second surface with the second surface being opposite the first surface.

The Smith et al. patent, as discussed, does not disclose or suggest a spacer fabric. Further, there is no recitation in the Smith et al. patent that the first surface facing the wearer's breasts is substantially smooth relative to the second surface. In fact, after lamination using heat and pressure, both surfaces would, most likely, be of equal smoothness. Accordingly, withdrawal and reconsideration of the rejection are respectfully requested.

Claim 11 depends from independent claim 9 and provides that the plurality of perforations are on a portion of the spacer fabric layer that correspond to a location where the wearer's breasts lay, and that said plurality of perforations allow a predetermined amount of air to substantially traverse through said spacer fabric layer, and that said predetermined amount of air are suitable to cool the wearer's breasts during exercise.

As discussed, the Smith et al. patent does not disclose or suggest a spacer fabric. There is no recitation in the Smith et al. patent that the inner layer has a plurality of perforations that allow a predetermined amount of air to substantially traverse through the fabric. As discussed above, the Smith et al. patent mentions lace only once, "[p]anty 20 includes a front panel 21, frontal side panels 22 and transitional lace panels 23." (col. 6, line 63). Moreover, there is no recitation in the Smith et al. patent that the transitional lace panels have more than one layer, let alone a first fabric layer, a second fabric layer and a third

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fabric layer, with the spacer fabric layer providing breathability to the wearer's breasts as recited in claim 9. Rather, column 7, lines 6 through 9 of the Smith et al. patent provide that front panel 21 and panels 22 and 25 are formed of the laminate shown in Figures 1 and 2.

In addition, the inner heat activated web or film layer together with the outer layers are subjected to heat and pressure. The Office Action asserts that when heated the net cross pieces remain in the net structure and adhere the layers above and below. However, the application of heat and pressure to form the laminate teach away from an inner layer that provides breathability to a wearer's breasts. Also, the heat activated web or film material and layers being formed into a laminate at temperatures between 300 °F and 350 °F with applied pressure does not suggest that the web or film provides breathability. Thus, in contrast, the use of pressure and heat to activate the web or film to form the laminate of the Smith et al. patent teaches contrary to the formation of an inner layer having a plurality of perforations that provide breathability to a wearer's breasts or allow a predetermined amount of air to substantially traverse the fabric. Reconsideration and withdrawal of the 35 U.S.C. 102(b) rejection are respectfully requested.

Independent claim 15 is directed to an article of clothing for covering over a wearer's breasts. Claim 15 provides that a spacer fabric layer be enclosed between the first fabric layer and the second fabric layer. The spacer fabric layer provides breathability to the wearer's breasts, and the spacer fabric layer has a pattern, that is visible through at least one of the first fabric layer and the second fabric layer. Also, the pattern is disposed on a first location corresponding to a second location where the wearer's breasts lay.

In the Smith et al. patent, there is no such spacer fabric disclosed. In contrast, as noted above, the brassiere in the Smith et al. patent has a laminate 58, that has an outer layer and an adhesive web or film positioned between the

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outer layer and the wearer's breasts. This adhesive web or film is laminated and is heat activated, and is not a spacer fabric.

Additionally, there is no recitation in the Smith et al. patent that the inner layer is of such a material that would provide breathability of a wearer's breasts. In contrast, in the Response to Arguments portion, the Office Action asserts that the outer layer of the Smith material is of lace material as suggested therein, the material has openings and is breathable through those openings and that the net has openings and is also breathable through those openings even when the adhesive adheres the fabrics together and therefore, all of the fabric layers are breathable therethrough. Applicants respectfully disagree. Again, the Smith et al. patent mentions lace only once, "transitional lace panels 23." (col. 6, line 63). There is no recitation in the Smith et al. patent that the transitional lace panels have more than one layer, let alone a first fabric layer, a second fabric layer and a third fabric layer, with the spacer fabric layer providing breathability to the wearer's breasts as recited in claim 15.

In addition, the inner heat activated web or film layer together with the outer layers are subjected to heat and pressure. The Office Action asserts that when heated the net cross pieces remain in the net structure and adhere the layers above and below. However, the application of heat and pressure to form the laminate teach away from an inner layer that provides breathability to a wearer's breasts. Also, the heat activated web or film material and layers being formed into a laminate at temperatures between 300 °F and 350 °F with applied pressure does not suggest that the web or film provides breathability. Thus, the Smith et al. patent fails to disclose or suggest that the spacer fabric layer provides breathability to the wearer's breasts, as recited by claim 15.

Further, there is no recitation in the Smith et al. patent that the inner layer has a pattern. Still further, Applicants are unable to find any recitation in the Smith et al. patent that any perforations are visible through the any of the fabric

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layers. As discussed above, the Smith et al. patent mentions lace only once, and there is no recitation that the transitional lace panels have more than one layer, let alone a first fabric layer, a second fabric layer and a third fabric layer, with the spacer fabric layer that provides breathability to the wearer's breasts as recited in claim 15. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1 through 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,174,217 to Judson (hereinafter "Judson"). Applicants respectfully disagree.

Claim 1 is described above.

Judson provides an undergarment that has a skin-contacting panel and an outer sheer panel which define a pocket therebetween. The pocket is adapted for interchangeably receiving an insert in which the insert can be seen through the sheer panel. Inserts are provided in a variety of colors, appearances, or scents for placement into the undergarments to change the decorative scheme of the undergarment.

Judson provides that the insert "does not function to enhance or shape an individual's breast but is positioned within pocket 34 merely to change the decorative scheme of the brassiere." (col. 5, lines 36-37). Thus, Judson fails to disclose or suggest that the third fabric layer provides support to the pair of breast cups, as recited by claim 1.

Claims 2 through 8 depend from claim 1, and, thus, are not anticipated by Judson. Reconsideration and withdrawal of the 102(b) rejection are respectfully requested.

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Claim 5 depends from independent claim 1 and provides that the third fabric layer has a feature selected from the group consisting of a plurality of dimples, a plurality of valleys, and any combinations thereof.

There is no recitation in Judson that the third fabric layer has a plurality of dimples, a plurality of valleys or any combinations thereof. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

Claim 9 and Judson are described above.

Judson does not provide such spacer fabric provided for in claim 9. In contrast, Judson provides that the insert is positioned within a pocket merely to change the decorative scheme of the brassiere. (col. 5, lines 36-37). Thus, Judson fails to disclose or suggest a spacer fabric layer being connected to the outer layer of fabric when the article of fabric of clothing is positioned on the wearer, let alone that the spacer fabric layer is positioned between the outer fabric layer and the wearer's breasts, the spacer fabric layer provides breathability to the wearer's breasts, the spacer fabric layer has a first side and a second side, and the spacer fabric layer having a plurality of perforations on a location of the spacer fabric layer.

Claims 10 through 14 depend from claim 9, and, thus, are also not anticipated by Judson. Reconsideration and withdrawal of the 102(b) rejection are respectfully requested.

Claim 15 and Judson are described above.

Judson does not provide such spacer fabric set forth in claim 15. Judson provides that the insert is positioned within a pocket merely to change the decorative scheme of the brassiere. (col. 5, lines 36-37). Thus, Judson fails to disclose or suggest that a spacer fabric layer be enclosed between the first fabric

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layer and the second fabric layer, let alone that the spacer fabric layer provides breathability to the wearer's breasts, and the spacer fabric layer has a pattern, that is visible through at least one of the first fabric layer and the second fabric layer, as recited by claim 15.

In view of the foregoing, Applicants respectfully submit that all claims presented in the application patently distinguish over the cited prior art. Accordingly, Applicants respectfully request favorable consideration and that this application be passed on to allowance.

Respectfully submitted,

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